S.B.CIVIL WRIT PETITION NO.366/2005.
(Krishi Upaj Mandi Samiti, Sri Vijaynagar v. Shyam Bhushan & Another)

DATE OF ORDER: JANUARY 24, 2005.

**HON'BLE MR. JUSTICE R.P.VYAS.**

Mr.Pankaj Bohra, for Petitioner.

The instant petition has been filed by the petitioner – the Krishi Upaj Mandi Samiti,Sri Vijaynagar, praying therein that by an appropriate writ, order or direction, the order dated May 14, 2004 (Annexure 5) passed by the Labour Court, Sri Vijaynagar may be quashed and set aside.

The facts giving rise to the instant petition are that Shri Shyam Bhushan – respondent No.1 filed an application under Section 33C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947') on October 23, 2003, before the Labour Court, Sri Ganganagar, stating therein that earlier, he was removed by the employer – the present petitioner (Krishi Upaj Mandi Samiti, Sri Vijaynagar). He raised an industrial dispute, which was decided in his favour on November 8, 1996. Against that award, the employer (Department) filed a writ petition before the Hon'ble Rajasthan High Court, which was decided vide order dated December 4, 1998, in which it was directed by the High Court that within a period of two months of receiving the order dated December 4, 1998, the workman shall be given fresh appointment by his employer – Department. It was also stated that he was given appointment w.e.f. November 21, 1999, although he submitted the order dated December 4, 1998, passed by the High Court on December 26, 1998.

The respondent No.1 – Shyam Bhushan was not given fresh appointment within two months period as ordered by the High Court. Therefore, he is entitled

for the salary of Rs.40,916/- for the period from 4.12.98 to 21.11.99.

Reply to the application under Section 33C (2) of the Act, 1947 was submitted by the present petitioner - the Krishi Upaj Mandi Samiti, Sri Vijaynagar before the Labour Court, Sri Ganganagar. It was stated in the reply that the employer (Department) filed D.B.Civil Special Appeal No.1509/1999 against the order dated December 4, 1998, passed by the High Court in S.B.Civil Writ Petition No.613/98. It was also stated that although the workman submitted the order dated December 4, 1998 on December 26, 1998, but the employer (Department) had made correspondence with its head office to get sanction for taking back him on duty. Thereafter, the sanction was granted by the head office and his appointment letter was issued on November 12, 1999 by the employer (Department). In pursuance to this letter dated November 12,1999, the workman joined the duty on November 22, 1999. It was stated that the order of the High Court is only with regard to his fresh appointment, therefore, the workman is not entitled to any arrears of salary prior to his appointment.

After perusing the documents and hearing the arguments of both the sides, the learned Labour Court held that workman-respondent No.1 Shri Shyam Bhushan is entitled for the salary and other allowances for the period 26.2.99 to 21.11.99 in the pay sale in which he is getting his pay and other allowances after his appointment. It was also directed by the Labour Court that the workman-respondent No.1 is also entitled for 6% interest per annum on the amount of arrears and allowances during the said period. The employer-department was directed to make the payment of this amount within a period of one month from the date of passing the order.

Being aggrieved by the order dated Mary 14, 2004 (Annexure 5) passed by the learned Labour Court, Sriganganagar, the present petitioner (Department) has

filed the instant petition under Articles 226 and 227 of the Constitution of India before this Court.

Heard learned counsel for the petitioner.

Section 33C (2) of the Industrial Disputes Act, 1947 is relevant for the purpose of deciding the instant petition, which reads as under :-

"Section 33C (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government."

It is admitted position that the order was given by the Rajasthan High Court on December 4, 1998, in which it was specifically stated that the workman would be given fresh appointment by the employer (Department) within a period of two months from the date of submission of a copy of the order. The workman submitted a copy of the order of the High Court in the office of the employer (Department) on December 26, 1998. Then it was the duty of the Department to give fresh appointment to the workman within a period of two months from December 26, 1998. But the Department took the stand that adequate time was required for seeking sanction and completing other formalities, before giving a fresh appointment to the workman, therefore, the delay was caused. In my opinion, it is not a plausible explanation given by the Department. It is significant to mention here that neither a fresh appointment was given to the workman by the Department within a period of two months from December 26,1998, nor any application for seeking extension of time was moved before the Court. The Department, instead of complying with the order of the Court, took the stand that the time was elapsed in seeking sanction and complying with the other formalities, which is not at all appreciable. Thus, it was the duty of the

Department to give fresh appointment to the workman from 26.12.98 to 25.2.99, i.e., within a period of two months from the date of submission a copy of the order of the Court by the workman before the Department. Thus, it was rightly held by the Tribunal under Section 33C (2) of the Act, 1947 that the workman is entitled to get pay and allowances from 26.2.99 to 21.11.99 with 6% interest per annum thereon .

In this view of the matter, the finding of the Tribunal is based on sound reasonings. It does not call for any interference by this Court under Articles 226 and 227 of the Constitution of India.

In the result, the instant petition has no merit. It is hereby dismissed in limine.

(R.P.VYAS), J.

scd.